



Standing Committee on Procedural Affairs and Agencies, Boards and Commissions

Report on the Matter of Privilege relating
to the Action taken by the Canadian Imperial
Bank of Commerce against the Member
for Riverdale.





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**STANDING COMMITTEE ON
PROCEDURAL AFFAIRS AND
AGENCIES, BOARDS AND COMMISSIONS**

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LEGISLATIVE ASSEMBLY
ASSEMBLÉE LÉGISLATIVE

The Honourable Hugh Edighoffer, M.P.P.,
Speaker of the Legislative Assembly.

Sir,

Your Standing Committee on Procedural Affairs and Agencies, Boards and Commissions has the honour to present its Report and commends it to the House.

A handwritten signature in cursive script, reading "Mike Breough".

Michael J. Breough, M.P.P.
Chairman

Queen's Park
9 January 1986

MEMBERSHIP OF THE STANDING COMMITTEE ON
PROCEDURAL AFFAIRS AND
AGENCIES, BOARDS AND COMMISSIONS

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Clerk of the Committee

TOD J. DECKER
Assistant Clerk of the Committee

* Margaret Marland, M.P.P., substituted for Mr. Turner when the Report was adopted.

** Ross McClellan, M.P.P., substituted for Mr. Martel when the Report was adopted.

On Tuesday, 26 November 1985, the member for Riverdale, David Reville, rose on a question of privilege in the House. Mr. Reville advised the House that on Monday, 25 November 1985, he had gone to his local post office and had retrieved two registered letters dated 14 November 1985 and 18 November 1985 from D. David Barrett, Vice-President, Ontario Region, of the Canadian Imperial Bank of Commerce. These letters informed Mr. Reville that it was the Bank's intention to terminate its association with him. The letters included drafts payable to Mr. Reville representing the balance on deposit with the Bank in two separate accounts. In addition, the Bank informed Mr. Reville that a personal demand loan in the name of Mr. Reville was considered by the Bank to be due and payable, and requested that the debt be paid in full by 27 November 1985.

In explanation, the letters stated,

In light of the recent events that occurred at our Toronto Eaton Centre and Yorkdale Shopping Centre branches in which you took an active part, the personal and business relationship which previously existed between us has been brought into question. As a result of your actions, we have decided to terminate our association with you and enclose drafts in the amounts of \$1,107.08 and \$7.46, representing the balance of your Account No. 06-18535 and that of Alternate Plumbing (No. 11-01617) of which you are recorded as the sole owner. Additionally, your personal demand loan in the amount of \$10,000 is now considered to be due and payable and as such, we are requesting that you make arrangements to repay this debt in full by November 27, 1985.

Furthermore, you are advised that we would prefer not to open any new accounts for you or conduct any other banking business with you. As a result of this, you are being asked to refrain from entering any of our premises in future.

Mr. Reville stated that on 19 October 1985 and on 2 November 1985 he had joined workers, on strike at the Bank, in demonstrations supporting the workers' demands for legislation relating to first contracts. Mr. Reville informed the

House that it was his belief that the action taken by the Bank was directly a result of his activity in support of the striking workers.

Mr. Reville felt his privileges as a member had been breached by the Bank's "attempt to use its economic power to discourage a member of this House from participating in important public events." Mr. Reville then put a motion that the matter be referred to the Standing Committee on Procedural Affairs and Agencies, Boards and Commissions for its consideration.

The Speaker informed the House that he was satisfied that the matter appeared to be a case of privilege. On motion by Mr. Reville, the matter was ordered referred to the Standing Committee on Procedural Affairs and Agencies, Boards and Commissions.

On Thursday, 12 December 1985, Mr. Reville testified before the Committee and stated that he was of the opinion that 'the Bank was using its business relationship with him to discourage him from being involved in a matter of considerable public importance to him and to others in Ontario'. Mr. Reville further stated that he was concerned that a "financial institution or any other powerful group not be allowed to interfere with a representative's job". He concluded his testimony by stating:

We all understand that part of our job takes place in the Legislature and part of our job takes place outside the Legislature. My view is that the privilege, in so far as it is protected, should be protected anywhere you do your job.

. . . I believe I was acting in my parliamentary capacity (when supporting the strikers) . . . otherwise there would have been no point in identifying myself as a member of the provincial parliament (at the demonstrations in the Banks).

The Chairman, President and Chief Executive Officer of the Canadian Imperial Bank of Commerce, R. Donald Fullerton, and Mr. Barrett, also testified before

the Committee. In a prepared statement to the Committee, Mr. Fullerton stated:

I wish to . . . mak(e) it clear that the Bank did not intend to infringe on Mr. Reville's privileges. The Bank would never attempt to infringe on the privileges of any elected representative in any jurisdiction. It made a mistake in closing several accounts of individuals, including Mr. Reville, who were associated with demonstrations in support of striking Visa employees . . . (I)t was an error in judgment; it was contrary to our policies . . .

Mr. Fullerton further stated that the purpose of the Bank in closing Mr. Reville's accounts and in calling Mr. Reville's loan was to permit the Bank to preclude Mr. Reville's attendance on Bank premises. Donald J. M. Brown, counsel to Messrs. Fullerton and Barrett, explained in more detail the reasons for the Bank's actions in a letter to the Committee. He stated:

The reason for severing the banking connection was to make it possible to request Mr. Reville not to enter upon the Bank's premises, something which could not be done as long as Mr. Reville was a customer of the Bank. No legal processes, such as an injunction or actions based on the Trespass to Property Act, were available as long as Mr. Reville was a customer. He couldn't even be asked to keep out of the Bank's branches.

During the course of the Committee's hearings, the question was raised as to whether the Bank's actions were intended to influence Mr. Reville's actions with respect to Bill 65, An Act to amend the Labour Relations Act, which makes provision for the settlement of first collective agreements by arbitration where collective bargaining has been frustrated. In answering questions with respect to this point, Mr. Fullerton stated that the Bank was governed by the Canada Labour Code which contains provisions for the imposition of a first contract. The Bank, Mr. Fullerton went on to say, had no interest in the amendments being proposed to the Ontario Labour Relations Act because its provisions could have no application to the Bank.

The representatives of the Bank acknowledged that their actions were contrary to the policy and general good business practice of the Canadian Imperial Bank of Commerce. Mr. Fullerton stated in reply to questioning by members that it was not Bank policy to call loans in the manner in which Mr. Reville's loan was required to be repaid. The borrower would usually be given a reasonable time to pay and reorganize his business affairs. Mr. Barrett further stated that the Bank did not attempt to contact Mr. Reville by telephone prior to sending the two registered letters to him. This was contrary to their normal practice. However, in reply to a question as to whether his actions on behalf of the Bank in terminating the banking relationship with Mr. Reville were done with the intent to affect Mr. Reville's duties or voting pattern in the Legislative Assembly, Mr. Barrett replied "absolutely not".

The Committee was assisted in its consideration of this matter by evidence given on 19 December 1985 by Roderick Lewis, Clerk of the House, and Joseph Maingot, Q.C., Commissioner, Law Reform Commission of Canada, and formerly Law Clerk and Parliamentary Counsel at the Canadian House of Commons. The Committee also had the benefit of a background memorandum on privilege compiled by the Clerk of the Committee.

Privilege

The Committee is of the opinion that a general discussion of parliamentary privilege would be useful for all members in understanding the subject.

Parliamentary privilege is part of the general public law relating to the customs, practices, procedures, rights and powers of the Legislature and of its members. As Maingot notes at page 11 in Parliamentary Practice in Canada a privilege is, in the legal sense, "an exemption from some duty, burden, attendance, or liability to which others are subject." Parliamentary privilege gives members of the Legislature the minimum degree of protection without which they could not carry out their duties in the Legislative Assembly. Parliamentary privilege does not place members above the law as is sometimes erroneously stated.

Standing Order 18(a) defines privilege as follows:

Privileges are the rights enjoyed by the House collectively and by the Members of the House individually conferred by the Legislative Assembly Act and other Statutes, or by practice, precedent, usage and custom.

Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament sets out, at page 70 of the twentieth edition, the following definition of parliamentary privilege:

Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the ordinary law.

Hatsell in Precedents of Proceedings in the House of Commons defines the privileges of Parliament as the rights which are "absolutely necessary for the due execution of its power."

In discussing the nature of privilege, it is stated in Australian House of Representatives Practice that:

Parliamentary privilege relates to the rights and immunities which belong to the Parliament, its Members and others, which are essential for the operation of the Parliament. These rights and immunities allow the Parliament to meet and carry out its proper constitutional role, for Members to discharge their responsibilities to their constituents and for others properly involved in the parliamentary process to carry out their duties and responsibilities without obstruction or fear of prosecution.

Privileges are not the prerogative of members in their personal capacities. These rights and immunities are claimed and enjoyed by the House in its corporate capacity and by its members on behalf of the citizens whom they represent.

In explaining privilege, Maingot states:

In order to perform its functions as a legislative body, a legislature requires absolutely certain privileges, rights or immunities; that is to say, it cannot carry on unless it has them. It will be seen that a distinctive mark of a privilege is its ancillary character or subordinate nature - it is a means to accomplish a purpose or fulfil a function.

The legislative body needs this legal protection or immunity to perform its function and to defend and vindicate its authority and dignity. The members of the legislative body enjoy these rights and immunities because the legislature cannot act or perform without the unimpeded use of the services of its members.

The Legislative Assembly Act sets out the privileges of the Legislative Assembly of Ontario. Section 45(1)(2) provides as follows:

45. (1) The Assembly has all the rights and privileges of a court of record for the purposes of summarily inquiring into and punishing, as breaches of privilege or as contempts and without affecting the liability of the offenders to prosecution and punishment criminally or otherwise according to law, independently of this Act, the acts, matters and things following:

2. Obstructing, threatening or attempting to force or intimidate a member of the Assembly.

In addition to these enumerated rights and immunities necessary for the House and its members to perform their legislative function, Maingot notes that "the House . . . may also examine any direct or indirect act or omission other than an attack or disregard of the enumerated rights and immunities, and if the House is of the view that any such act or omission tends to obstruct or impede the House or its members in their parliamentary functions, the House may declare such act or omission to be a contempt of Parliament and invoke its penal jurisdiction, whether or not there is a precedent." While the privileges of the House have

been defined, there are many cases where acts or omissions might occur which interfere with the proceedings of the House. This is why contempt of the House has no limits. The House must be able in such new circumstances to find that a contempt of the House has occurred.

Members are entitled to go about their parliamentary business undisturbed. The assaulting, menacing or insulting of any member on the floor of the House, or while the member is coming or going to or from the House, or on account of his behaviour during a proceeding in Parliament, is a breach of privilege. Any form of intimidation of a member for or on account of his behaviour during a proceeding in Parliament could amount to a contempt (i.e. while the member is functioning as a member, not in his constituency, but while actually participating in parliamentary business and saying or doing something necessarily incidental to parliamentary business. The speaking or doing must be inextricably tied to some parliamentary business in which the member is taking part while moving a motion, voting, reducing a motion to writing, handing a notice to the Clerk, presenting a report from a committee, or simply speaking in the House or committee).

A member who is intimidated or molested for what he says outside a proceeding in Parliament cannot successfully claim privilege. Maingot notes at page 197 of Parliamentary Practice in Canada that in order to be considered a matter of privilege, the speaking must be during a proceeding in Parliament.

Maingot goes on to state that to establish that a member has been obstructed or interfered with in his parliamentary duties "it must be shown that the member was obstructed in his work relating to a proceeding in Parliament and not simply while he was performing his representative duties in his constituency or in other myriad areas (which is the wont of members of the House of Commons), nor simply in his private capacity."

Whether a parliamentary privilege is violated depends on the nature and extent of any particular privilege claimed by Parliament in relation to the circumstances of the time, the underlying test in all cases is whether the right claimed as a privilege is one which is absolutely necessary for the due execution of the powers of Parliament. While a member's duties and responsibilities may be "interfered with" (e.g. when a member is denied visiting privileges in order to tour a correctional institution or when civil servants are not allowed to communicate with members of parliament) such situations do not constitute a question of privilege because they do not relate to the member's parliamentary work but rather to his constituency work or other work in his capacity as a member.

In 1978, Simma Holt, the member for Vancouver-Kingsway in the Canadian House of Commons, raised a question of privilege with respect to an incident which occurred when she appeared before the Canadian Radio-television and Telecommunications Commission as a member of Parliament on behalf of her constituents and petitioners at a hearing in Vancouver on the renewal of cable licences. While attempting to put a pin on the coatjacket of a commissioner, another commissioner grabbed the button and threw it away. The commissioner then told Mrs. Holt to get the buttons out of the room or he would "Shove them up your. . .". Mrs. Holt argued that a member had the right to go about his or her business or to perform the functions without being molested, intimidated or obstructed by a public servant. As a result of the commissioner's actions and words, Mrs. Holt maintained that her privileges as an individual member of the House had been breached.

In his ruling on 2 November 1978, Speaker Jerome ruled that there was no prima facie case of privilege. It is worth quoting at some length the Speaker's ruling. Speaker Jerome stated:

. . . the difficulty which we face is not whether a member is acting in a capacity as a member of parliament. Indeed, there are many such occasions today which were not envisaged a few years ago, and increasingly members of this House are called upon to perform functions which, although very much related to their duties - and in the eyes of their

constituents may constitute a fulfilment of their obligations to their voters - but do not necessarily bear a direct relationship to the privilege which has traditionally surrounded and protected members of this House in a very special way. I want to stress that privilege is accorded to members of the House of Commons over and above the rights enjoyed by any ordinary citizen. For that reason it has always been interpreted very strictly by this House, because there is no reason why a general privilege or right to some kind of special treatment should surround a member of the House of Commons or any other citizen before our boards or commissions or in the everyday work we perform as citizens in this country, except in so far as it relates to the basic or essential function of carrying out our obligations as elected members in assisting in or participating in the proceedings of the House of Commons itself.

After listening to the honourable member for Vancouver-Kingsway I will attempt to summarize the issue before the House as follows: Does the treatment received by the honourable member at the hands of a member of a public commission constitute a contempt of the House? Can the privileges which undoubtedly protect members in the performance of their duties in the House and in the committees be extended to include their duties in their constituencies and, specifically, in this case, an appearance before a hearing of a federal commission? Is there a distinction in the application of the law of privilege beyond the precincts of parliament when it is claimed on behalf of a member appearing before a federally appointed board or commission on the one hand, or any other non-parliamentary body on the other? I must express, of course, as I am sure all honourable members do, my shock and concern that a member of parliament would be treated in the way described by the honourable member by any public body appearing anywhere in this country.

Indeed, I would be equally shocked, as I am sure would all other honourable members, were such treatment accorded to any citizen by any federally appointed board or commission in this country. However, in itself that is a statement of the dilemma. As I indicated earlier, parliamentary privilege is that which surrounds us here and ensures that we are able to carry out the basic function of participating in the proceedings of this House.

Since it is a right of a member of parliament, in common with all other citizens, to appear before these boards and commissions it would seem to me to be an unwarranted extension of the privilege of this House to extend it not only to meetings of the committees of this House which may take place from time to time around the country, but to go even a step further than that and extend it to the point at which it would somehow protect a member of parliament making an appearance before a public body anywhere throughout the country.

It seems to me that despite the fact that society demands more of members of parliament than it did even a few years ago, not all of these demands impose a strict parliamentary duty in the course of the service of the House of Commons. Every one of us has duties as representatives of the electorate to our constituents, and these duties are increasing. But the duties for which a member of parliament can claim the protection of privilege are his parliamentary duties, particularly in his primary duty or service to this House of Commons here. At times the line distinguishing these duties as a representative on one side and the parliamentary duties on the other is very fine. There may be cases in which the line can become blurred, but in present circumstances unless I am absolutely convinced that a member's ability to serve in the proceedings in this House have been affected, I cannot find a case of privilege.

As I undertook to do, I have similarly to examine the law of contempt of the House to see whether or not there was a separate remedy available to the honourable member in this way, to ascertain whether, if a strict question of privilege was not involved here, there may not have been, in the treatment accorded to the honourable member a contempt to her person which could be translated further to be a contempt of the House. However, I face the same difficulty in this approach. Since the member was not in the circumstances acting in the official capacities which are surrounded by privilege - that very narrow category - it would, I think, be unwarranted extension of the precedents to extend privilege with respect to an act which was directed to her person in the circumstances. . . .

Therefore, while I reiterate that the honourable member has described circumstances which I find to be shocking, which ought to be considered as most grave not only to her as a member of parliament but as a citizen appearing before a federally appointed board, there may be remedies which she may and perhaps will pursue as they relate to a grievance in respect to that administration specifically.

I have to decide whether or not any motion which would be put to this House by the member would enjoy priority over any other piece of business by virtue of it being a case of privilege or of contempt. On the basis of that strict procedure, one which has been guarded so carefully and, I believe, properly so in the past, I have to say that I cannot find it comes within the parameters of privilege or contempt. The honourable member will therefore have to pursue whatever other remedies may be available to her in the circumstances.

The Issue

The only issue before the Committee is whether, based on the evidence, the actions of D. David Barrett, Vice-President, Ontario Region, of the Canadian Imperial Bank of Commerce, constituted a breach of privileges of the House or amounted to a contempt of the House.

Conclusion

After careful consideration of the evidence, your Committee has concluded that the actions of D. David Barrett, Vice-President, Ontario Region, of the Canadian Imperial Bank of Commerce, on behalf of the Bank, did not constitute a breach of the privileges of the House according to the traditionally strict interpretation of privilege in British parliamentary systems. The precedents which were before the Committee clearly indicate that in order to establish that a member has been intimidated, threatened, obstructed or interfered with in his parliamentary duties and responsibilities, it must be shown that the member was intimidated,

threatened, obstructed or interfered with in his work relating to a proceeding in Parliament and not simply while he was performing his representative duties in his constituency or in other areas.

Your Committee is of the opinion that the actions of the Vice-President, Ontario Region, of the Canadian Imperial Bank of Commerce, in terminating the Bank's relationship with the member for Riverdale were arbitrary and were not based on justifiable business reasons relating to the conduct of Mr. Reville with respect to his two accounts or his loan. The actions of Mr. Barrett on behalf of the Bank were punitive, intended to inflict a form of punishment on Mr. Reville because of his actions, actions which did not violate any statute.

In the circumstances, your Committee is of the opinion that the actions of the Canadian Imperial Bank of Commerce were ill-advised, unbusiness-like and unacceptable in the circumstances.

As Speaker Jerome noted in his ruling cited above, the duties and responsibilities of members have changed dramatically in recent years. Increasingly, members are called upon to perform functions, which although related to their duties and responsibilities as members, do not relate to a proceeding in Parliament and to the privileges of the House which have traditionally surrounded and protected members .

The Committee recognizes that parliamentary privilege is accorded to members over and above the rights of the ordinary citizen and as such extreme care must be taken to ensure that the privilege is not abused. However, your Committee is of the opinion that parliamentary privilege should be re-examined to determine if its scope is consistent with the functions, duties and responsibilities of members in contemporary society. Therefore, the Committee recommends that the subject-matter of privilege should be further reviewed by the Standing Committee on Procedural Affairs and Agencies, Boards and Commissions.

**DISSENTING OPINION OF REMO MANCINI, ROSS McCLELLAN,
BERNARD NEWMAN AND DAVID W. WARNER**

In public and before the Committee, the Chairman, President and Chief Executive Officer of the Canadian Imperial Bank of Commerce, R. Donald Fullerton, stated a number of times that the Bank "made a mistake in closing (the) accounts of . . . Mr. Reville" and that "it was an error in judgment", that it was "not Bank policy to call loans" in the manner in which the member for Riverdale's loan was called, and that the Bank "took an action which was contrary to the policy and general good business practice of (the) Bank."

The actions of the Canadian Imperial Bank of Commerce were, in our opinion, meant to impose a financial burden on the member for Riverdale. The actions of the Bank were calculated to intimidate Mr. Reville and were meant to bring pressure on Mr. Reville to alter his conduct as a member of Parliament and to inhibit the free expression of his views. Furthermore, aside from the intent of the Bank, the actions of the Bank caused the member for Riverdale to give immediate attention to his financial affairs, thus diverting his attention from his parliamentary duties and depriving the House of the unimpeded service of one of its members.

It is therefore our opinion that a serious breach of privilege was committed by the Canadian Imperial Bank of Commerce. However, we do not recommend that any punitive action be taken by the House against the Bank or its officers.

We do, however, concur with the recommendation of the majority of the members of the Committee that the subject-matter of parliamentary privilege be thoroughly reviewed by the Standing Committee on Procedural Affairs and Agencies, Boards and Commissions.

The first of these is the fact that the system is not a simple one. It is a complex system, and the complexity is not only in the number of components, but also in the way they are connected. This complexity is what makes the system so interesting, and it is what makes it so difficult to understand.

The second of these is the fact that the system is not a static one. It is a dynamic system, and the dynamics are not only in the way the components interact, but also in the way the system evolves over time. This dynamics is what makes the system so interesting, and it is what makes it so difficult to understand.

The third of these is the fact that the system is not a simple one. It is a complex system, and the complexity is not only in the number of components, but also in the way they are connected. This complexity is what makes the system so interesting, and it is what makes it so difficult to understand.

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